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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/541,574	07/07/2005	Kenji Inagaki	Q88973	7802
23373	7590	07/18/2008		
SUGHRIE MION, PLLC			EXAMINER	
2100 PENNSYLVANIA AVENUE, N.W.			MESH, GENNADY	
SUITE 800				
WASHINGTON, DC 20037			ART UNIT	PAPER NUMBER
			1796	
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			07/18/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/541,574	<b>Applicant(s)</b> INAGAKI ET AL.
	<b>Examiner</b> GENNADII MESH	<b>Art Unit</b> 1796

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

- 1) Responsive to communication(s) filed on 17 June 2008.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

- 4) Claim(s) 1-7 and 9-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-7 and 9-15 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

- 1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/0256/06)  
 Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_

**DETAILED ACTION**

***Response to Amendment***

Applicant's Amendment filed on June 17, 2008 is acknowledged.

Claims 1- 7 and 9-15 have not been amended and are pending in Application. Claim 8 was canceled by Applicant. Rejection is maintained as it was set forth in previous Office action mailed on March 17, 2008.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

1. Claims 1- 7 and 9 -14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yamada et al.( US 6,372,343) in view of Yamamoto ( US 6,593,447) combine with Kowallik et al.( 4,254,0180).

Rejection was adequately set forth in paragraph 1 of the presiding Office action mailed on March 17, 2008 and is incorporated here by reference.

2. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yamada et al.( US 6,372,343) in view of Yamamoto ( US 6,593,447) combine with Kowallik et al.( 4,254,0180) as applied to claims 1- 7 and 9 -14 above, and further in view of Bair ( US 5,096,722).

Rejection was adequately set forth in paragraph 2 of the presiding Office action mailed on March 17, 2008 and is incorporated here by reference.

***Double Patenting***

Double Patenting Rejection was adequately set forth in paragraph 3 - 7 of the presiding Office action mailed on March 17, 2008 and is incorporated here by reference.

***Response to Arguments***

3. Applicant's arguments filed on June 17,2008 with respect to Claims 1-7 and 9-15 have been fully considered but they are not persuasive.

3.1. Applicant's arguments related to Claims 1- 7 and 9 -14 rejected under 35 U.S.C. 103(a) as being unpatentable over Yamada et al.( US 6,372,343) in view of Yamamoto

( US 6,593,447) combine with Kowallik et al. (4,254,0180) based on alleged deficiency of individual references.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Applicant stated that Yamada does not teach specific polycondensation catalyst as it defined in claims 1 and for this reason" does not render the present claims obvious".

Note, that Yamada as primary reference does not need disclose all elements claimed by Applicant in Claim 1.

Same related to Applicant's arguments against Yamamoto and Kowallik : applicant stated that Yamamoto or Kowallik do not teach catalytic system individually.

However, as it was shown in rejection above ,combination of Yamada with Yamamoto and Kowallik teach all elements of subject matter claimed Applicant in Claims 1-7 and 9-14.

Note, that one of ordinary skill in the art would be motivated to combine Yamada with Yamamoto and Kowallik in order to obtain polyester fiber structure disclosed by Yamada, wherein polyester fibers obtain by polymerization process with catalytic system, comprising specific phosphorous compound (of Formula ( III) as it claimed by Applicant) per teaching of Yamamoto combine with Kowallik , wherein polyester

poses good color tone and excellent melt stability and prevent formation of coarse precipitates that can clog spinning dyes during fiber production.( see rejection above).

Therefore, Applicants arguments were found unpersuasive.

3.2. Applicant's arguments related Claim 15 also based on alleged deficiency of individual references and based on analysis above ( see 8.1.) also were found unpersuasive.

3.3. Provisional ODP rejection maintained herein for the Record.

3.4. Applicant's Arguments related to ODP rejection over US Patents 7,087,299 and 7,189,797 were found unpersuasive for same reasons as above ( see 8.1.) - arguments based on alleged deficiency of individual reference , rather that combination of references. As it was shown in rejection ( see 3.1 and 4.1) claims of instant Application are obvious modification of Claims of US Patents 7,189,797 and 7,087,299 in view of cited references.

Therefore, applicants arguments related to ODP were found unpersuasive.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to GENNADIY MESH whose telephone number is (571)272-2901. The examiner can normally be reached on 10 a.m - 6 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on (571) 272 1119. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Gennadiy Mesh  
Examiner  
Art Unit 1796

/GM/

/VASUDEVAN S. JAGANNATHAN/  
Supervisory Patent Examiner, Art Unit 1796